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No. 392

**In The Supreme Court of The United States**

**\* October Term, 1947**

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**FRANK E. CREEDON, HOUSING EXPEDITER,  
OFFICE OF THE HOUSING EXPEDITER,  
PETITIONER**

**V.**

**CHARLES STONE**

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**BRIEF OF RESPONDENT IN OPPOSITION TO PETITION  
FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE SIXTH CIRCUIT**

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Charles Stone, respondent herein, files this brief in opposition to the petition for writ of certiorari, and urges that this Court should not review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit in the above entitled cause entered July 28, 1947, affirming a decision of the United States District Court for the Northern District of Ohio.

### **Jurisdiction**

Respondent acknowledges jurisdiction of this Court as set forth on page 2 of the Petition.

### Questions Presented

1. Where a landlord fails to register newly rented premises within the thirty-day period prescribed by the rent regulation, and the rent director reduces the maximum rent, does the rent director have authority to order a refund, retroactive to the date of first renting?
2. Does the statute of limitation provided by Section 205(e) of the Emergency Price Control Act, as amended, run from the time when a tenant pays rent to a landlord who has neglected to file a timely registration statement of his housing accommodations, or from the time that the landlord fails or refuses to obey a retroactive rent reduction order directing him to refund overcharges to the tenant?

### Statute and Regulation Involved

Respondent agrees that the statute and regulation involved is, as stated on pages 2 and 3 of the Petition.

### Statement

Respondent accepts the statement as set forth on pages 3-5 of the Petition, with the following additions:

1. That on the trial in the District Court, defendant (respondent herein) urged there never was a rental agreement but rather that the arrangement constituted an exchange of houses (R. 4, 7).
2. That in his brief filed in the District Court, and in his brief filed in the Circuit Court, respondent challenged the authority of the rent director to make a retroactive order of refund.

### **Specification of Error**

Respondent denies that the Circuit Court of Appeals erred, as alleged on page 5 of the Petition.

### **REASONS FOR DENIAL OF THE WRIT**

- I. Where a landlord fails to timely register rented property, the rent director may reduce the maximum rental, but he has no authority to make such reduction of rental retroactive.

The rent regulation, insofar as this phase of the argument is concerned, provides:

"If a landlord fails to file a proper registration statement within the time specified . . . the rent received for any rental period commencing on or after the date of the first renting . . . shall be received subject to refund to the tenant of any amount in excess of the maximum which may later be fixed by an order under section 5(c). Such amount shall be refunded to the tenant within thirty days after the date of the issuance of the order . . ."

There is a rule of statutory construction that words in a statute are given their ordinary meaning, and the entire statute is read to ascertain the meaning of the legislature (Congress). The order referred to in said section means the order reducing the rent, and said statute must be read as follows:

"If the landlord fails to file a proper registration statement . . . the rent received for any rental period . . . shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order. Such amount shall be refunded . . . after the date of the issuance of the order (order reducing maximum rental) . . ."

The office of price administration, being a statutory body, created by special statutory enactment, the rent administrator may only do those acts and enter such orders as are specifically permitted and the authority for which is specifically granted in the legislation itself. The rent director cannot take unto himself powers or rights which are not granted by the act, and consequently, there being no provision in the statute authorizing the rent director to make any order of refund, the order of refund is a nullity. While it is true that the United States Supreme Court has ruled that the validity of any order of the O.P.A. rent director cannot be questioned except in the Emergency Court of Appeals,<sup>1</sup> nevertheless, that ruling only applies to the validity of any act which the director was authorized to do or any order which he was authorized to make, and would not apply to an act which on its face is illegal.

In other words, the validity of the amount of the refund or his right to order a refund is not to be questioned in the District or Circuit Court. But, the authority of the director to do any act not authorized by the rent regulation act may be questioned in any court.

However, the Court has the right, authority and jurisdiction to interpret the Act and to rule on whether or not the rent director is authorized to make a retroactive reduction in rental.

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<sup>1</sup>Bowles v. Meyers, 149 F(2) 440;

Porter v. Eastern Sugar Associates, 159 F(2) 299.

**II. The statute of limitation provided by section 205(e) of the Act begins to run from the time the rent is paid.**

The Act in question, insofar as it is pertinent to the present issues, reads as follows:

"If any person selling a commodity (collecting rent) violates a regulation, order or price schedule prescribing a maximum price or maximum prices (maximum rent) the person who buys such commodity for use or consumption other than in the course of trade or business (the tenant), may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller (landlord) on account of the overcharge . . . For the purpose of this section, the payment or receipt of rent for defense area accommodations shall be deemed the buying or selling of a commodity as the case may be; and the word 'overcharge' shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity (renting premises) violates a regulation, order or price schedule prescribing a maximum price or maximum prices, and the buyer (tenant) either fails to institute an action under this sub-section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the administrator may institute such action on behalf of the United States within such one year period . . ."

The Act also provides, after providing for registration of premises,

"If the landlord fails to file a proper registration statement within the time specified . . . the rent received for any rental period commencing on or after the day of first renting . . . shall be received subject to refund to the tenant of an amount in excess of the maximum rent which may later be fixed under section

5(c). Such amount shall be refunded to the tenant within thirty days after the issuance of the order . . . The foregoing provisions and any refunds thereunder do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7 . . .

In the circumstances enumerated in this section, the administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required."

It is noteworthy that in the Act there is no provision whatsoever for the rent administrator to make a retroactive order and as above pointed out, since the rent administrator is purely a statutory creature, he can only perform such acts, and enter such orders, and impose such conditions only as authorized by statute.

All the administrator may do under the statute is to establish a maximum rental, except that the administrator is granted discretion to relieve the landlord of a duty to refund if he finds that the landlord was not at fault in failing to register. In other words, where a landlord fails to register within the time prescribed by the regulation, the administrator is given the right and discretion to make two determinations: first, the maximum rental; and second, that the landlord was or was not justified in failing to register. If he determines that the maximum rental as registered was incorrect in that it was too high, he is authorized to fix a maximum rental. If he determines that the landlord was not at fault, then he may provide that no refund for rentals is required to be made by the landlord; *and that is the extent to which he may go.*

Thus we see that the rental regulation act has two provisions. One, that when a landlord collects rent and does not register the property within the time prescribed by statute that he takes such rent subject to a refund to the tenant of any overcharge which may ultimately be determined by the director, and the right of the director to establish a maximum rental. Nowhere in the act is there an express provision for the rent director specifically to make a retroactive finding or order a refund.

Since the O.P.A. regulation is in derogation of the rights of the landlord, the rule of law is that such regulation must be strictly construed. In bringing action for treble damages under the regulation act, there is a distinction, as was pointed out by the trial court, between the tenant bringing an action and the ~~landlord~~ *director* bringing an action.

Under the Act dealing with the statute of limitations, being U.S.C.A. 50, A.P.P. 925 (e) (cited as 205(e)), if a landlord renting premises violates a regulation, order or price schedule, the tenant may within one year from the date of the occurrence of the violation bring an action against the landlord on account of the overcharge. This must be read together with that portion of the Act which provides that if a landlord fails to file a proper registration statement, *the rent received commencing on or after the date of the first renting* shall be received subject to the refund to the tenant of any amount in excess of the maximum rent which may later be fixed by the order of the rent director. Thus, if a landlord collects rent at a time when the property is not registered, he does so at his peril, and in the event that the rent director subsequently reduces the rental, and the landlord does not refund the excess within thirty days after the maximum rental is fixed, he

subjects himself to a suit by the tenant. While the tenant cannot bring his action until thirty days from the date of the setting of the maximum rent by the director, nevertheless, as soon as the thirty day period expires he may bring his action. A reading of the entire act clearly discloses the intent of Congress to be that a suit may only be instituted for one year's rental prior to the bringing of the suit.

In the instant case, the order of the director finding the maximum rent was made June 28, 1945. The action could have been brought by the Director July 28, 1945. Had he brought such action, he could have instituted proceedings to cover all the rental overcharge. And, reading the entire Act, it becomes apparent that when Congress referred to a violation, they did not mean the violation of the refund provision of the Act, but rather the violation in collecting an amount exceeding the maximum rental.

The Act authorizing the administrator to bring the action limits the action to within the same year as the tenant might have brought his action.

It becomes apparent that the use of the word "violation" in the Act has two meanings. One is the violation of the final order establishing the maximum rental for the property, for the purpose of establishing the date within which the action may be commenced, and one meaning is the collection of the overcharge for the purpose of establishing the amount upon which a suit may be predicated, so that at the time the suit is instituted, the only rents which may be recovered are those rents which may be collected within the one year period prior to the commencement of suit. The trial court recognizes this distinction when he says: (R. 63, 64)

The court agrees with plaintiff, therefore, that the violation of the order did not occur until July 30, 1945.

It does not follow, however, as plaintiff seems to contend, that the . . . overcharge or overcharges upon which the action is based . . . U.S.C.A. 50 App 925 (e) occurred, therefore, on July 30, 1945. The defendant did not on July 30, 1945 make an overcharge of \$270.00. U.S.C.A. 50 App. 925 (e) defines overcharges as 'the amount by which the consideration exceeds the applicable maximum price . . .'. The applicable maximum price as prescribed by the order of June 29, 1945 was \$45.00 per month. The true situation, therefore, was that on June 29, 1945 the Office of Price Administration determined that the rent should have been \$45.00 per month, thus determining that there had been an overcharge of \$30.00 for each month. It is well-settled that this Court has no jurisdiction to consider the validity of such an order.

It is upon overcharges of \$30.00 per month that the action is based, not on a single overcharge of \$270.00. Plaintiff is here seeking to recover damages under U.S.C.A. 50 App. 925(e). That section . . . establishes the sole means . . . whereby the Administrator on behalf of the United States may seek damages in the nature of penalty'. *Porter vs. Warner Holding Company* . . . . U.S. . . . , slip sheet opinion dated June 3, 1946, 14 L.W. 4383. The evident plan of that section is to give a right to damages for each overcharge. *Gilbert vs. Thierry*, 58 F. Supp. 235 and authorities cited therein. The trouble with plaintiff's position is that it confuses the obligation of the landlord to refund, or make restitution, with the obligation to respond in damages. The former obligation exists only by virtue of Section 4(e) of the Rent Regulation for Housing. U.S.C.A. 50 App. 925(e) imposes no obligation to refund or make restitution but only to respond in damages under certain conditions. It may well be that by virtue of the holding of the Supreme Court in

Porter vs. Warner Holding Company, supra, plaintiff could enforce such a refund order by appropriate action under Section 925(a). This action, however, is based on Section 925(e) and 'The time limitation expressed in 205(e) 925(e) operates as a limitation of the liability itself as created . . .'. Bowles vs. American Distilling Company, 62 F. Supp. 20, 22. For this reason the Court has jurisdiction to award damages under Section 925(e) only as to overcharges occurring one year prior to the filing of the action. Bowles vs. Gulf Refining Company, 61 F. Supp. 149; Bowles vs. American Distilling Company, supra; Thompson vs. Taylor, 62 F. Supp. 930. Plaintiff is entitled to recover, therefore, only for the three months of February, March and April of 1945."

And the Circuit Judges in the Opinion also recognized the distinction, when they said, (R. 75,76):

"The principal legal question presented is whether the one-year statute of limitations provided by the Act commences to run from the time of overcharge, as held by the District Court, or from the time of the failure to refund, as contended by the Administrator.

We think the judgment of the District Court is clearly correct. Section 205(e) is 'the sole means whereby individuals may assert their private right to damages and whereby the Administrator on behalf of the United States may seek damages in the nature of penalties.' Porter v. Warner Holding Co., 328 U.S. 395, 401, 402.

Read in the ordinary sense, as applied to the payment of rent, No. 205-(e) plainly provides that each separate overcharge is the violation referred to. Each separate overcharge is certainly a violation of the regulation or order 'prescribing a maximum price,' and each separate overcharge gives rise to a cause of action for the violation. Gilbert v. Thierry, 58 Fed. Supp. 235 (D.C. Mass.), affirmed, Thierry v. Gilbert, 147 Fed. (2d) 603, 604 (C.C.A. 1). There is no merit in

the contention that the violation upon which this cause of action is based is the failure or refusal to make the refund. Such a failure or refusal is a violation of No. 4(e) of the Rent Regulation for Housing; and if a refund order is issued by the Administrator, it is a violation of the order; but such failure or refusal is not the violation specified in No. 205(e), which is the violation of the 'maximum price regulation' or order. To causes of action based on these overcharges, since they are violations under No. 205(e), the one-year statute of limitations applies.

The action was filed February 1, 1946, and recovery here, under the court's findings as to wilfulness and negligence, was limited to overcharges occurring in the twelve months beginning February 1, 1945. But during this time overcharges were made only in three months, February, March, and April 1945, and the court properly entered judgment for \$90.00, the aggregate amount of the overcharges for those three months. Since the overcharge for each month constituted a separate and distinct violation (*Thierry v. Gilbert*, supra), the Administrator was not authorized to cumulate the separate overcharges of the months preceding February 1, 1945, together with the succeeding months, into a total of \$270.00, and recover for that amount.

41. Counsel for petitioner argue in their Petition (pp. 12, 13) that a landlord might benefit by his own wrongdoing, but, even under the ruling of the Circuit Court of Appeals, the rent director could have instituted the instant action on July 28, 1945, and held respondent to liability to pay all the rentals wrongfully collected under the Rent Director's reduction of maximum rental, and respondent should not be accountable to the delay in the institution of the suit by the Rent Director. This argument is applicable to all actions barred by any statute of limitations.

Furthermore, every tenant can always apply to the rent director for information as to whether a premise is registered, and if it is not registered, the rent director can make a timely recommendation as to rental, thus coming within the statute of limitation.

### CONCLUSION

For the reasons above set forth, respondent respectfully submits that the Writ of Certiorari should not be granted.

Respectfully submitted,

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